

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

WILLIAM J. COOK,

Plaintiff,

v.

Civil Action No. 2:10cv48
(Maxwell)

WARDEN CROSS, CAPT. OADIL,
LT. McCALLEY, C/O MALLOON,
P/A WHITNER and DAVID BOLDEN,

Defendants.

ORDER

On June 1, 2010, Magistrate Judge John S. Kaull filed his Report and Recommendation, wherein the plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within fourteen (14) days after being served with a copy of the Report and Recommendation (Doc. 13). Plaintiff filed his objections on June 11, 2010. See Doc. 15.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the plaintiff in his Complaint, brought pursuant to *Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), wherein plaintiff alleges that he was assaulted, were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation ("R&R"). Upon review of the plaintiff's objections, this Court finds that the plaintiff has not raised any issues that were not already thoroughly considered and addressed by the Magistrate Judge in his R&R. Specifically, the plaintiff objects to the recommended dismissal of defendant Lt. McCalley. As noted by the Magistrate Judge, while Lt. McCalley attempted to investigate the incident, the plaintiff, by his own admissions, did not cooperate and refused to tell defendant McCalley about the alleged assault. Accordingly, defendant McCalley could not have acted intentionally, deliberately or maliciously, and the

plaintiff has therefore failed to state a claim against defendant McCalley upon which relief can be granted. Moreover, this Court, upon an independent *de novo* consideration of all matters now before it, is of the opinion that the R&R accurately reflects the law applicable to this case. Therefore, it is

ORDERED that Magistrate Judge Kaull's Report and Recommendation (Doc. 13) be, and the same hereby is, **ADOPTED** and that this civil action proceed in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the plaintiff's claims against defendant Warden Cross shall be, and the same are hereby, **DISMISSED without prejudice** for failure to state a claim upon which relief may be granted. It is further

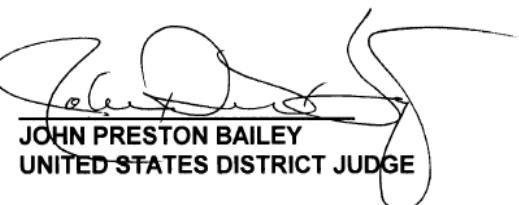
ORDERED that the plaintiff's claims against defendants Oadil, McCalley and Bolden shall be, and the same hereby are, **DISMISSED with prejudice**. It is further

ORDERED that the plaintiff's claims against defendants Malloon and Whitner shall proceed. Accordingly, the Clerk of Court is hereby directed to serve defendants Malloon and Whitner with a copy of a sixty (60) day summons and the Complaint in this civil action through the United States Marshals Service. It is further

ORDERED that the Clerk shall enter judgment for defendants Cross, Oadil, McCalley and Bolden.

The Clerk of the Court is directed to transmit a copy of this Order to all parties appearing herein and to mail a copy to the *pro se* plaintiff.

DATED: October 19, 2010.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE